



## **CITY OF HAYWARD**

### **AGENDA REPORT**

Meeting Date 12/16/04  
Agenda Item 1

**TO:** Planning Commission

**FROM:** Tim R. Koonze, Assistant Planner

**SUBJECT:** Use Permit No. PL-2004-0578 – Jack-in-the-Box (Anthony Poligono Operator/Applicant) – Foodmaker Inc. (Owner) - Request to Amend Use Permit 80-109 to Expand Operation of Drive-Through to 24 Hours/Daily

The Property Is Located at 1075 Tennyson Road Approximately 150 feet East of Tampa Avenue Within a CN (Neighborhood Commercial) District

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15305 Minor Alterations in Land Use Limitations); and
2. Approve the request to continue the 24-hour operation of the drive-through window subject to the findings and conditions of approval.

#### **DISCUSSION:**

The Jack-in-the-Box restaurant was originally approved by Use Permit 80-109. The use permit limited the hours of operation from 6 a.m. to midnight Sunday through Thursday and 6 a.m. to 2 a.m. Friday and Saturday. On June 26, 2003, the Planning Commission approved a request to amend Use Permit 80-109 by expanding the hours of the drive-through to 24 hours daily. The Commission approved a trial period of one year so that the effects of the extended hours of operation could be evaluated.

Over the past year neither the Planning Division nor the Police Department received any complaints regarding the hours of operations or the management of the restaurant. The number and type of police service calls to this site have been consistent with those of any other business in the area that operated during the late hours. The service calls have not been of a nature that would suggest a cause related to the operation or management of the restaurant. At 9:00 p.m. on October 27, 2004, there was a shooting on the premises that left two persons injured. The incident appeared to be drug related, and not related to the operation of the restaurant. The incident occurred during normal business hours.

A security guard has been required on site daily from 10:00 p.m. until 6 a.m. As the surrounding area is prone to criminal activity, staff is recommending that the security guard hours be extended to the hours of 6 p.m. until 6 a.m. daily as a precautionary measure. The owner is agreeable to this condition. With this modification staff has no objection to maintaining a 24-hour drive-through window at this restaurant.

The Planning Commission's approval to permit a 24-hour operation included making some site improvements and closing off the rear portion of the parking lot during the late evening hours to protect the apartment complex adjoining the rear property line. The required improvements have been installed and the parking arrangement appears to be functioning to the satisfaction of the restaurant and the adjoining residents. Staff recommends that the conditions approved by the Planning Commission in 2003, including a 24-hour operation, remain in place with the addition of extended guard hours.

Should it come to staff's attention that this use is operating in a manner which is not consistent with the approved conditions or is operating in a manner detrimental to the surrounding area, staff could bring the use permit before the Planning Commission for review. At that time the Commission could revoke the use permit, modify the permit, or add to the conditions of approval to ensure that the use is consistent with the findings. To revoke the use permit the Commission must determine that the use, or the manner in which it is conducted, managed or operated, impairs the character and integrity of the surrounding area, that it does not fully comply with the conditions of approval, and that modification of the conditions would not be in the public interest or would be detrimental to the public health, safety, or general welfare.

#### **PUBLIC NOTICE:**

On September 3, 2004, a notice describing the request to continue to operate the drive-through window on a 24-hour basis was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties. No responses were received.

On December 6, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. No responses were received.

#### **ENVIRONMENTAL REVIEW:**

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5, Minor Alterations of Land Use Limitations.

#### **CONCLUSION:**

Over the past year, it appears that the extended hours of the drive-through window have not posed a problem for either the Police or the nearby property owners and residents. The operation and management of the restaurant have not been detrimental to the public health, safety or general welfare of the neighborhood.

*Prepared by:*

Tim R. Koonze

Tim R. Koonze  
Assistant Planner

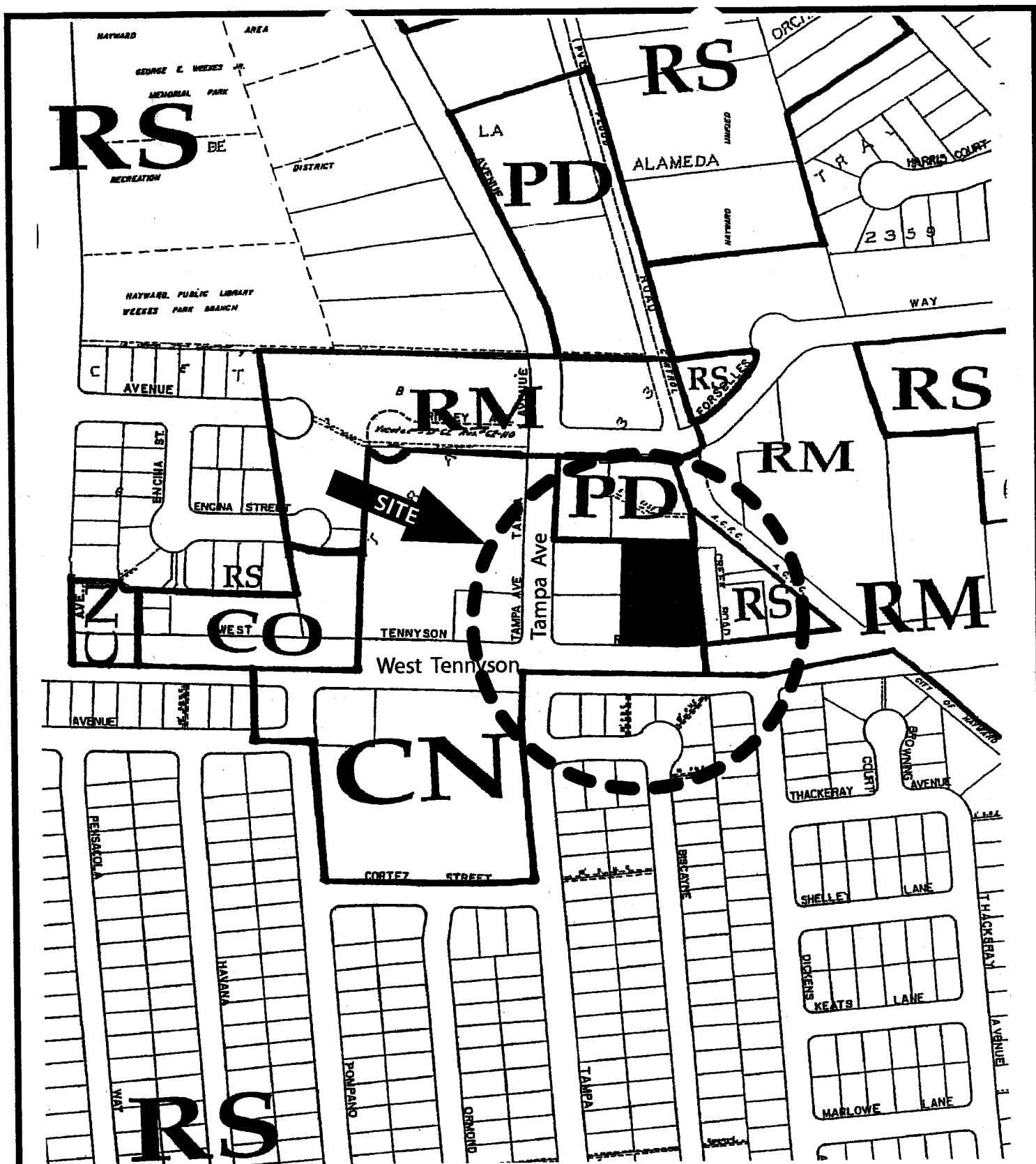
*Recommended by:*

Dyana Anderly

Dyana Anderly, AICP  
Planning Manager

Attachments:

- A. Area Map
- B. Findings of Approval
- C. Conditions of Approval
- D. Planning Commission Agenda Report and Minutes, June 6, 2003
- E. City Council Agenda Report and Minutes, September 16, 2003



### Area & Zoning Map

PL-2002-0577 UP

Address: 1043 W. Tennyson Road

Applicant: Virginia Fanelli

Owner: Anthony Poligono

CN-Neighborhood Commercial

CO-Commercial Office

PD-Planned Development

RM-Medium Density Residential RMB 3.5, RMB 4

RS-Single-Family Residential, RSB4, RSB6

## **FINDINGS FOR APPROVAL**

Use Permit No. PI-2004-0578  
Jack-in-the-Box  
Anthony Poligono (Operator/Applicant)  
Foodmaker Inc. (Owner)  
December 16, 2004

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. The proposed 24-hour drive-up window is desirable for the public welfare as it provides a late-night food source to the neighborhood.
- C. The proposed 24-hour drive-up window will not impair the character and integrity of the neighborhood as the restaurant is operated and managed in a manner that does not invite late night activity to occur on-site that would be conducive to criminal activity.
- D. Continuing the 24-hour drive-up window will not be detrimental to the safety and welfare on the neighborhood as the restaurant is operated and managed in a manner that does not invite late-night activity to occur on-site that would be conducive to criminal activity.
- E. The proposed conditions of approval requiring the daily collection of litter within 300 feet of the perimeter of the site is consistent with the strategy of the Harder-Tennyson Neighborhood Plan requiring the daily pick-up of litter surrounding fast-food restaurants.
- F. The proposed condition of approval assuring the orderly conduct of employees, patrons, and visitors on the premises, is consistent with the policy of the Harder-Tennyson Neighborhood Plan to increase public safety.

**Conditions of Approval**  
**UP 80-109**  
**Jack-in the-Box**  
**1075 West Tennyson Road**

*As amended per Use Permit 2004-0578*  
*December 16, 2004*

1. All improvements indicated on the approved site and landscape plan, as amended by staff and labeled Exhibit "A", must be installed prior to authorization for gas or electric meter service.
2. After initial installation, all plantings must be maintained, including replacement where necessary.
3. Within all new landscape areas, a complete automatic sprinkler system with an automatic on/off mechanism shall be installed.
4. Where any landscaped area adjoins driveways and/or parking areas, Class "B" Portland Cement concrete curbs shall be constructed to a height of six (6) inches above the finished pavement.
5. Each parking space shall be provided with a Class "B" Portland Cement concrete bumper block or continuous concrete curb not less than six (6) inches above the finished pavement.
6. The premises shall be kept clean, and the operator shall endeavor to see that no trash or litter originating from the use is deposited on neighboring properties.
7. No obnoxious odors shall be generated on the site.
8. Noise levels measured at the property line shall not exceed the level of background noise normally found in the area. If a noise problem develops in the speaker box or from customer traffic on the site which cannot be resolved by mitigation measures, the matter will be referred to the Board of Adjustments for review with the possibility of removing the exterior speaker box or taking other mitigation measures deemed appropriate by the Board at that time.
9. Management of the use shall take necessary steps to assure the orderly conduct of employees, patrons, and visitors on the premises.
10. A copy of these performance standards and all use permit conditions of approval shall be posted alongside the necessary business licenses and be visible at all times to employees of the establishment.
11. Outside utility meters, when not enclosed in a cabinet, shall be screened allowing sufficient distance for reader access.
12. The developer shall contact the Fire Prevention Bureau for the location of standpipe systems, first aid fire appliances, and/or Fire Department connections.
13. Open storage is prohibited in paved parking area.

14. A minimum of six concrete trash receptacles shall be provided on the site including two (2) receptacles on the abutting church property, and the design and location shall be approved by the Planning Director.
15. During construction of the drive-in, a minimum of ten (10) parking spaces shall be available for patrons.
16. Mechanical equipment such as air conditioners shall be prohibited on the roof, unless screening and installation is approved, as approved by the Planning Director.
17. Prior to issuance of any sign permit, the Planning Director shall review the proposed signs to insure the sign size is in proportion to the building and located attractively either on the building or on a freestanding structure.
18. Violation of conditions is cause for revocation of permit after public hearing before the duly authorized review body.
19. Any lights provided to illuminate the development/paved parking area shall be arranged so as to reflect the light away from the abutting residential uses.
20. The hours of operation shall be 6:00 a.m. to 12 midnight, Sunday through Thursday and 6:00 a.m. to 2:00 a.m., Friday and Saturday. *The drive-through widow can operate 24 hours daily.*
21. A Right Turn Only sign shall be installed at ingress from Tampa entering the site.
22. Driveway easement from Tampa to the site to be landscaped to delineate as a driveway.
23. Prior to issuance of a building permit, a site grading and drainage plan, prepared by the owner, shall be approved by the City Engineer.
24. Prior to issuance of a building permit, a revised landscape plan and complete irrigation plan shall be submitted for review and approval by the Parks Superintendent.
25. Prior to issuance of a building permit, the lot line adjustment application shall be approved on the three parcels or combined into one recorded parcel.
26. Prior to connection of utilities, the irrigation system shall be installed.
27. *Employees shall daily pick-up the trash originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site.*
28. *The manager shall take whatever steps are necessary to assure the orderly conduct of employees, patrons and visitors on the premises to the satisfaction of the Planning Director and the Police Chief, which may include the hiring of security guards.*
29. *The parking area shall be closed to the public by 10 p.m. seven days a week. The back portion of the parking lot shall be closed permanently.*
30. *A security guard shall be posted between the hours of 6 p.m. and 6 a.m. seven days a week.*
31. *Violation of these conditions is cause for revocation of permit after public hearing before the duly authorized review body.*



## **CITY OF HAYWARD**

### **AGENDA REPORT**

Meeting Date 6/26/03

Agenda Item \_\_\_\_\_

**TO:** Planning Commission

**FROM:** Tim R. Koonze, Assistant Planner

**SUBJECT:** Use Permit No. PL-2002-0577 – Jack-in-the-Box (Anthony Poligono Operator/Applicant) – Foodmaker Inc. (Owner) - Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours/Daily

The Property Is Located at 1075 Tennyson Road Approximately 150 feet East of Tampa Avenue Within a CN (Neighborhood Commercial) District

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Minor Alteration in Land Use Limitations; and
2. Deny the request to extend hours of operation and modify use permit by adding conditions of approval.

#### **DISCUSSION:**

The Planning Commission approved the Jack-in-the-Box restaurant on Tennyson Road in 1980. An appeal was filed and the application was forwarded to City Council who upheld the Planning Commission's approval. The use permit limits the hours of operation from 6 a.m. to 12 midnight Sunday through Thursday and 6 a.m. to 2 a.m. Friday and Saturday.

It came to staff's attention that Jack-in-the-Box was operating 24 hours a day, and they were asked to limit hours of operation to those allowed by the use permit. Jack-in-the-Box complied and is now maintaining the hours of operation originally approved by Council. The applicant subsequently filed an application requesting to operate the drive-through window 24-hours a day, seven days a week. The applicant states that staying open on a 24-hour basis will provide added service to customers.

Multi-family and commercial uses surround the property. Six multifamily units are located approximately 15-feet from the northerly property line, a gas station and a small multi-tenant commercial building are located to the west of the property and Glad Tidings Church abuts the easterly property line.



Over time, the Police Department has consistently received service calls to this Jack-in-the-Box establishment. Incidents ranged in seriousness from minor disturbances to drug activity to battery. Almost half of these called occurred after 10:00 p.m. Even though the restaurant is currently closed after midnight during the week and after 2:00 a.m. on weekends, since March 1, 2003 a security guard has been on the site from midnight to 6:00 a.m. and police calls to this site have maintained an average of three calls a month with the same percentage of calls occurring in the late evening and early morning hours. Although three calls a month is not unusually high, during the time the restaurant was open 24-hours a day the Police Department stated that the service calls were more frequent and of a more serious and violent nature.

The Harder-Tennyson Neighborhood Plan encourages support of the police to help reduce the crime rate and increase public safety. In recent years the City has devoted significant resources to reduce crime in this area. The Police Department recommends against extending the drive-up window hours in order to keep undesirable activity to a minimum during late night and early morning hours. Given the concerns of the Police Department, allowing the drive-up window of the restaurant to operate on a 24-hour basis would not be consistent with the neighborhood plan.

The conditions of approval that were approved in 1980 area attached. With this application to modify an existing use permit, conditions of approval may be added or amended as necessary to assure that the use occurs in maximum harmony with the area and in accordance with official City policies. Although staff recommends that the request to operate 24 hours a day be denied, it is recommended that conditions of approval be added that (1) require employees to daily pick up litter originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site, (2) require the site manager to take whatever steps are necessary to assure the orderly conduct of employees, patrons, and visitors on the premises, including hiring security guards if necessary, and 3) require that signs be posted on the property requesting patrons to reduce the volume of their car stereos. These conditions are intended to address the issues associated with the high number of police calls and reported problems of loitering and late night criminal activity, noise and litter related to the operation.

#### **PUBLIC NOTICE:**

On October 28, 2003, a notice describing the request to operate the drive-up window on a 24-hour basis was mailed to all property owners and tenants within 300 feet of the subject property and to all interested parties. Negative responses were received from the owner of the Tennyson Shopping Center (located across the street to the east) the owner and manager of Tampa Square multi-family residential complex (adjacent to the rear of the property) and a resident who resides at 27746 Tampa Avenue on the south side of Tennyson Road.

The comments noted that the drive-thru speaker was too loud, that Jack-in-the-Box patrons play their car stereos too loudly and that there is excessive litter in the neighborhood coming from the fast food establishment. There was a common concern that longer operating hours will encourage late-night loitering and contribute to an already substantial drug-dealing problem that exist in the area.

Upon receiving these comments, the applicant began working with the neighborhood and agreed to:

1. Reduce the volume of the drive-thru speaker;
2. Post signs requesting patrons to reduce the volume of their car stereos;
3. Close the rear parking area from dusk to dawn.
4. Hire an armed security guard to patrol the premises from 6:00 p.m. to 3:00 a.m.;  
and
5. Continue efforts to remove Jack-in-the-Box litter from the surrounding streets on a daily basis.

In a letter dated April 4, 2003, the owner and manager for the Tampa Square Complex located next door to the Jack-in-the-Box informed the City that these improvements have addressed their concerns and they no longer object to the 24-hour operation of the drive-thru window as long as these requirements are made conditions of approval and the applicant adheres to them. The two other parties that expressed concerns would like to continue the restriction on Jack-in-the-Box's operating hours.

On April 25, 2003, a Notice of Public Hearing for the Planning Commission meeting was mailed.

#### **ENVIRONMENTAL REVIEW:**

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5, Minor Alterations of Land Use Limitations.

#### **CONCLUSION:**

The applicant has worked with the adjacent property owners and has proposed various improvements to alleviate their concerns of the restaurant drive-up window operating on a 24-hour basis. Although the applicant has managed to appease some of the neighbors, the Police Department continues to object to extending the drive-up window hours in this area of Hayward known to have suffered from problems related to crime.

*Prepared by:*

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Tim R. Koonze  
Assistant Planner

*Recommended by:*

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Dyana Anderly, AICP  
Planning Manager

Attachments:

- A. Area Map
- B. Aerial Photo
- C. Email expressing concern dated November 1, 2002
- D. Letter expressing concern dated November 5, 2002
- E. Letter expressing concern dated November 8, 2002
- F. Letter of support dated May 23, 2003
- G. Letter of support dated May 27, 2003
- H. Applicants letter dated June 16, 2003
- I. Conditions of Approval, 1980
- J. Findings for Denial of 24-hour operation and Findings  
for Approval of additional conditions of approval
- K. Conditions of Approval

## MINUTES



## REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD Council Chambers Thursday, June 26 2003, 7:30 P.M. 777 "B" Street, Hayward, CA 94541

Principal Planner Patenaude agreed that if the other one were removed, they would still need a variance.

Commissioner Sacks moved, seconded by Commissioner Halliday, to deny the variance for the larger 750-foot structure and approve the variance for the smaller 350-foot structure with staff to bring back findings and conditions of approval.

The motion passed 6:1, with Commissioner Zermeno voting "No."

Assistant City Attorney Conneely reminded them that the applicant could appeal the denial of the variance for the 750-foot structure.

3. Use Permit No. PL-2002-0577 – Jack-in-the-Box (Anthony Poligono Operator/ Applicant) – Foodmaker Inc. (Owner) – Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours Daily – The Property is Located at 1075 Tennyson Road Approximately 150 Feet East of Tampa Avenue

Principal Planner Patenaude presented the report. Commissioner Zermeno recused himself. Principal Planner Patenaude reported that the primary issue is crime in the area and police calls to the area, half of which occur after 10 p.m. Police noted the service calls were more frequent and serious when the restaurant was open later and longer. He said opening late might contribute to more crime. He said the application gave staff the opportunity to look at previously approved conditions. Staff recommended denying the request but modifying the conditions of approval to include daily pick-up of litter by employees. Also require management to assure orderly conduct on the premises, and post signs on the premises asking patrons to reduce the volume of their car stereos. He noted that the correspondence received by the City of Hayward encouraged the commission to deny the request but that two parties had changed their petition to support. He added that with the sparse landscaping along the property line, the Commission might want to consider more trees.

Commissioner Halliday asked whether all three conditions were covered in the original conditions of approval.

Principal Planner Patenaude explained that today's conditions would have more power to be enforced.

Commissioner Halliday then asked whether the conditions could still be added whether or not the application is approved.

Principal Planner Patenaude said, yes, that's the recommendation.

The public hearing opened at 11:15 p.m.

Virginia Fanelli, speaking for the applicant, asked for approval of opening the drive-through for 24-hour service. She noted the letters of objection and what the restaurant owner had done to work with the neighbors. She explained that they had met with Tom Silva, apartment owner next door, as well as a neighborhood group. As a result, they have already made changes which include turning the speaker unit volume to the lowest decibels, additional trash receptacles, more trash pick ups during the working hours, closed the back lot, hired a security guard who will work from 7 p.m. to 3 a.m., and agreed to plant trees. She said they have also participated in school activities with coupons. As a result of these actions, all the neighbors have withdrawn their objections. She said the restaurant also circulated petitions to patrons asking for 24-hour operation. She stated that the late hours brought in \$400,000 a year. She noted that staff is basing the denial on police recommendations. She called the Police Department to get further information and Lt. Lowe said no recommendation had been made by the Police Department. She then asked for approval with further conditions noting that the Commission can always bring the request back for review. This is a corporate operated restaurant.

Commissioner Sacks commented that these were conditions at the time of the original permit.

Ms. Fanelli responded that the most significant changes are hiring security and closing the back parking lot.

Commissioner Sacks stated that this is a highly drug-induced neighborhood, and asked how they deal with that.

Ms. Fanelli said they are working to try to find avenues, but obviously do not have all the answers. She suggested that, hopefully, by having activity in the area 24 hours, it might help.

Commissioner Halliday asked what the rationale was for not keeping the restaurant open, just the drive-through.

Ms. Fanelli responded that it is easier to watch the window and what is going on as well as being safer for the employees to close the restaurant.

Commissioner Halliday then asked staff whether the City of Hayward has regulations for drive-ins to be open 24-hours a day.

Planning Manager Anderly said they have standard operations for drive-ins. Each application is looked at on a case-by-case basis. For example, the McDonalds near Denny's is not near a residential area. They have approved a Jack-in-the-Box in a different neighborhood. She noted that this applicant seems very well intentioned, but managers change and it is difficult to enforce conditions because of the type of operation.

Commissioner Thnay asked about the schedule of the security guard from 7 p.m. to 3 a.m. and what happens between 3 a.m. and 7 a.m. He then asked whether the corporation would be willing to donate to after school program,

Ms. Fanelli explained that the hours were deemed to be the hours of the most crime in the

## MINUTES



## REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD Council Chambers Thursday, June 26 2003, 7:30 P.M. 777 "B" Street, Hayward, CA 94541

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area. She added that they have offered to work with the after school programs but the Harder-Tennyson group is not too organized.

Assistant City Attorney Conneely suggested that if members agreed to grant the application, they could put a sunset on the provision.

Tom Silva, owner of the apartment house next door, explained that events have caused a positive change in the area. He said he has been a landlord since 1980 and the past six-months there have been a great deal of changes. He said the situation is different from a year ago. The applicant has responded and become neighbors in the community, as well as making significant improvements in the area. He said with the closing the back area as well as increased security, he would support the 24-hour application. He added that he welcomed their participation.

Commissioner Halliday asked how the parking lot is closed off.

Mr. Silva explained that they store barricades in the back and at a certain time, all the back is blocked off.

The public hearing closed at 11:37 p.m.

Commissioner Bogue said he spent time at the restaurant between 11:30 p.m. and 1 a.m. He noticed that the volume was turned down on the speakers, and commented that he counted 45 cars an hour going through the drive-through. He explained that he was concerned about the drive through because of the lack of directional signs and path of travel from the Tampa driveway but suggested this might be easily taken care of.

Commissioner Thnay moved, seconded by Commissioner Sacks, to grant approval of the application for a 6-month trial period, to include both the applicant's conditions as well as those asked for by staff. He added that he would like to see them contribute about 5-10 percent of future revenues for after-school programs.

Assistant City Attorney Conneely asked whether the motion would include an expiration date 6-months from the date of this request, noting also that to require a contribution might be illegal.

Commissioner Thnay then qualified his motion to say, "encourage" the applicant to contribute to an after-school program.

Commissioner Caveglia then made a substitute motion, seconded by Commissioner Halliday, to approve staff recommendation and deny the appeal.

Commissioner Halliday added that she did appreciate what the owner has done to work with the community. She said she did not see the need for this to become a 24-hour operation

terming it not necessary.

Commissioner Caveglia stated that the police have been clear on their position.

The motion carried by the following vote:

AYES:	COMMISSIONERS Halliday, Caveglia, McKillop
	CHAIRPERSON Bogue
NOES:	COMMISSIONER Thnay, Sacks,
ABSENT:	None
ABSTAIN:	COMMISSIONER Zermeno

#### ADDITIONAL MATTERS

##### 4. Oral Report on Planning and Zoning Matters

Planning Manager Anderly reminded members that at the next meeting they would be electing new officers.

##### 5. Commissioners' Announcements, Referrals

Chairperson Bogue asked for support for a Planning Commission resolution to honor Commissioner Caveglia who was termed out of his position. The vote was unanimous. Chairperson Bogue then thanked Commissioner Caveglia for his hard work as a member of the Commission and read the resolution of commendation.

#### ADJOURNMENT

Chairperson Bogue adjourned the meeting at 11:48 p.m.


APPROVED:



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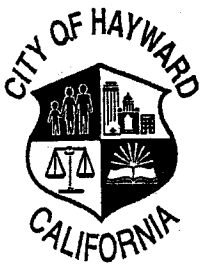
Barbara Sacks, Secretary  
Planning Commission

ATTEST:



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Edith Looney  
Commission Secretary



# CITY OF HAYWARD

## AGENDA REPORT

AGENDA DATE 09/16/03

AGENDA ITEM 4

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Appeal of Planning Commission Denial of Use Permit No. 2002-0577 to Expand Operation of Drive-Through to 24 Hours - Jack-in-the-Box (Operator), Anthony Poligono - (Owner) - The Property Is Located at 1075 West Tennyson Road

### RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding that the project is categorically exempt from CEQA and approving a 24-hour operation for a one-year period, and approving additional conditions of approval.

### DISCUSSION:

The use permit for the Jack-in-the-Box restaurant on West Tennyson Road was approved by the City Council in 1980. The City Council limited the hours of operation from 6 a.m. to midnight Sunday through Thursday and from 6 a.m. to 2 a.m. Friday and Saturday.

Staff was made aware that Jack-in-the-Box was operating its drive-through 24 hours a day; consequently, in December 2001, staff directed the operator to limit the operation to the hours allowed by the use permit. The Jack-in-the-Box is currently maintaining the hours of operation originally approved by Council. The operator subsequently filed an application requesting to operate the drive-through window 24 hours a day, seven days a week, indicating that the expanded hours would provide added service to customers.

On June 26, 2003, with a 4-2 vote, the Planning Commission denied the request to extend the hours of operation. In denying the application, Planning Commissioners noted that there was no compelling reason to extend the hours of operation and the Police Department had concerns about the potential for criminal activity were the hours to be extended.

In acting on the application to modify the use permit, the Planning Commission added conditions of approval. When an application to modify an existing use permit is considered, the reviewing body may add or amend conditions of approval beyond those requested by the applicant to assure that the use continues in maximum harmony with the area and in accordance with official City policies. Accordingly, the Planning Commission added three conditions to the use permit (Exhibit D) requiring (1) employees to daily pick up litter on properties within 300 feet of the perimeter of the site, (2) the site manager to take whatever steps are necessary as determined by the Planning



Director and the Police Chief to assure the orderly conduct of employees, patrons, and visitors on the premises, including hiring security guards, and 3) that signs be posted on the property requesting patrons to reduce the volume of their car stereos. These conditions are intended to address the issues associated with safety issues and reported problems of loitering and late night criminal activity, noise and litter related to the operation and concerns of the neighbors.

At the Planning Commission hearing, a Jack-in-the-Box representative indicated that they had been working with area residents to come to an agreement for maintaining a 24-hour operation. The representative indicated that they would be willing to hire a security guard during late-night hours, close off the rear portion of the parking lot at night, turn down speakers, add additional trash cans, post signs requesting that customers turn down their radios, and plant trees in order to satisfy nearby residents. The manager of the adjacent apartment complex, which has six units located only 15 feet from the rear property line, indicated his support of the extended hours of operation as long as the rear portion of the parking lot was closed and increased security were provided. No other members of the public spoke on the issue, although staff had received comments both for and against the extended hours.

A letter appealing the Planning Commission's denial action (Exhibit C) was filed stating that the Planning Commission disregarded the support of the neighbors and that the staff's recommendation had no evidence to support its claims of crime associated with late night operating hours. Also subsequent to the Planning Commission meeting, the appellant offered a compromise proposal, which would allow the drive-in to operate 24 hours a day for a one-year trial period with the stipulation that the parking lot would be closed during late-night hours and a security guard would be posted between 10 p.m. and 6 a.m.

The data provided below indicate that there were more police service calls during the time when the restaurant was open 24 hours than when the drive-in reduced its hours. Also, many of the late-night calls were of a more violent nature. However, the Jack-in-the-Box drive-in is located in an area associated with high crime; and in recent years, the City has made progress in curbing crime to the extent that there has been a reduction in crime in the area generally. Upon re-evaluation of the data, staff has concluded that the reduction in the calls for service to the drive-in may not be associated solely to the reduction in the hours of operation but to the decrease in crime in the vicinity. Also, the data do not reflect that all violent crime occurred after midnight.

#### Open 24 hours

Year	Service Calls	Incidents: 11p.m. to 6a.m.
1999	81	29
2000	99	43
2001	91	29

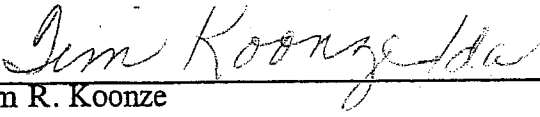
#### Current Hours

Year	Service Calls	Incidents: 11p.m. to 6a.m.
2002	67	14
2003 (as of 8-31-03)	31	8

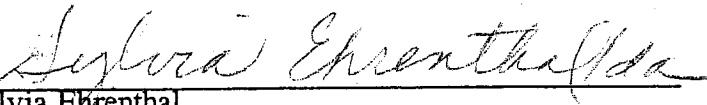
In response to a notice of appeal action, staff received a letter from the owner of the property occupied by Jack-in-the-Box, which indicates his opposition (see Exhibit F). However, it should be noted that the property owner signed the original application authorizing the City to process the application for expansion of the hours of operation to 24 hours a day (Exhibit G). There is a contractual arrangement between Jack-in-the-Box and the property owner; the staff is unaware of the ability of the owner to prevent the 24-hour operation.

After reconsidering the police data and taking into account that additional conditions of approval could reduce undesirable impacts, staff is supportive of a trial period allowing the drive-in to operate on a 24-hour basis for a period of one year as long as additional conditions of approval are imposed. The suggested conditions of approval would require closure of the parking lot after 10 p.m. and a security guard on duty between the hours of 10 p.m. and 6 a.m. (Refer to Exhibit D.)


Prepared by:

  
Tim R. Koonze  
Assistant Planner

Recommended by:

  
Sylvia Ehrenthal  
Director of Community and Economic Development

Approved by:

  
Jesús Armas, City Manager

Attachments:

- Exhibit A - Aerial Photo
- Exhibit B - Appeal Letter, dated June 30, 2003
- Exhibit C - Findings for Denial of 24-hour operation and Findings  
for Approval of Additional Conditions of Approval
- Exhibit D - Conditions of Approval
- Exhibit E - Minutes and Planning Commission Report of June 26, 2003
- Exhibit F - Letter of Opposition from Property Owner
- Exhibit G - Application for 24-Hour Operation Signed by Property Owner



**MINUTES OF MEETING OF THE CITY COUNCIL  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, September 16, 2003, 8:00 p.m.**

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2. Authorization for the City Manager to Execute a Lease with the Federal Aviation Administration for Control Tower Space at the Hayward Executive Airport

Staff report submitted by Airport Manager Shiner, dated September 16, 2003, was filed.

It was moved by Council Member Hilson, seconded by Council Member Rodriquez, and unanimously carried to adopt the following:

Resolution 03-124, "Resolution Authorizing the City Manager to Execute a Lease Agreement Between the City of Hayward and the Federal Aviation Administration for Control Tower Space at the Hayward Executive Airport"

3. Authorization for City Manager to Execute a Professional Services Agreement with The Culver Group for a Boundary Survey of the Hayward Executive Airport

Staff report submitted by Airport Manager Shiner, dated September 16, 2003, was filed.

It was moved by Council Member Hilson, seconded by Council Member Rodriquez, and unanimously carried to adopt the following:

Resolution 03-125, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement with the Culver Group for a Boundary Survey of the Hayward Executive Airport"

## **HEARINGS**

4. Appeal of Planning Commission Denial of Use Permit No. PL-2002-0577 to Expand Operation of Drive-Through to 24 Hours - Jack-in-the-Box (Anthony Poligono Operator/Applicant) - Foodmaker, Inc. (Owner) - Request to Amend Use Permit 80-109 - The Property is Located at 1075 Tennyson Road

Staff report submitted by Assistant Planner Koonze, dated September 16, 2003, was filed.

Planning Manager Anderly described the property and the conditions required for approval for the expanded drive-through operation. The applicant agreed to the condition to close and lock the entire parking lot and hire security guards during the extended hours. The drive-through business

itself would be the only part of the restaurant to be open. This permit would be on a one-year trial-basis. She noted that further review by the staff indicates that the data does not support the information of criminal activity at this site as a result of their previous 24-hour operation.

Council Member Henson commented on the letters of support from neighbors with conditions to maintain a clean business area and limit noise. He discussed other 24-hour fast food restaurants as the Fairway Park.

Interim Police Chief Dwyer discussed the information presented to community policing, and he noted that crime in the area is generally down. He added that the statistics do not justify denial adding that Jack in the Box management has been cooperative.

Council Member Ward confirmed that the staff recommendation had changed from the Planning Commission deliberations. It was noted that the apartment property owner is now in favor of extending the hours at this time. The applicant has since noted second thoughts on the application for 24-hour service as well. The restaurant management would be utilizing the services of a security guard and lessen the need for the City's police services.

Council Member Jimenez commented that workers from late night shifts need accommodations as well as others.

Council Member Dowling asked for the present operating hours for a new fast-food restaurant.

Council Member Hilson expressed concerns on the amount of noise that vehicles and boom boxes generate. He commented that people rarely call the police on excessive noise. He asked what criteria or threshold information would be utilized to determine the continuance of this business after a period of one-year.

City Manager Armas said he expressed this concern to the applicant, noting that the Chief of Police would exercise his professional discretion to make that determination. He added that the language is included in the exhibits.

Council Member Rodriguez asked about the landscaping on the property line. She also commented on the 24-hour Jack-in-the-Box in Fairway Park.

Planning Manager Anderly explained that the trees along the line had died but were now a requirement included in the conditions.

Council Member Ward confirmed the verbal agreement with the applicant regarding the determination of violations of conditions. He then asked whether the applicant was now supporting the conditions.

City Manager Armas explained that these had been incorporated in Exhibit "D."

Planning Manager Anderly explained that these conditions were agreeable to the applicant.



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Mayor Cooper opened the public hearing at 9:03 p.m.

Virginia Fanelli, representing the applicant, explained the changes that were made at the site to respond to neighbors concerns. Speaker volume was lowered, radios have been turned down, leaflets have been distributed, and they have established a trash collection program in the general vicinity. The parking lot at the rear of the lot will be closed and entrance to the business will not be available to customers during those hours. They have hired security guards during the late night hours. In working with the neighbors, she has letters of support from those who had previously opposed the extension of hours. She also agreed to place 24 inch boxed trees along the back area as requested. She commented that the property owner received the letters of objection but might not have received letters of approval from the same neighbors.

Council Member Ward asked how the Council could support conditions opposed by the owner of the property.

City Attorney O'Toole commented that this is not the placement of any structure, which might impair the property. It is a condition of someone who has a legal interest to operate a business on the property. It is a tenant-landlord issue, rather than a City Council question. If their lease states hours of operation, it would then be enforceable.

Council Member Ward suggested that he would be more confident if the property owner approved the extension and suggested that perhaps the item could be continued until the property owner approves the changes.

Council Member Dowling asked how the parking would be closed. Ms. Fanelli stated that sturdy stanchions would be used to close off the parking lot. She then described the process for closing off the restaurant.

Tom Silva, a property manager for seventeen years, commented on the open dialogue that was offered to resolve issues. He noted that the noise has gone down substantially, but asked that the back lot be closed at 7 p.m. He also suggested additional trees be installed and that they be more mature trees for privacy. He commented that there were no lighting issues in his experience.

Council Member Ward asked about the difference in the time of closure for the parking lot between Mr. Silva's comments and the staff report. Ms. Fanelli suggested the applicant would agree to closing off the back portion of the parking lot permanently. They also agreed to plant 24-inch box trees between the two properties.

Jason Moreno emphasized the need to focus on the crime issues in this area. He suggested that extra law enforcement might be necessary at this location.

Mayor Cooper closed the public hearing at 9:28 p.m.

Council Member Ward reluctantly moved to support the staff recommendation, as well as the exemption from CEQA, and to approve a one-year trial period. He modified the conditions to read: "the parking area will be closed to the public by 10 p.m., 7 days a week." The security guard shall be posted daily, from 10 p.m. to 6 a.m. Additional conditioning will include added landscaping with the planting of as many 24-inch boxed trees as appropriately determined by the landscape architect. Additionally, the applicant has indicated that they will close the back portion of the parking lot on a permanent basis. Council Member Henson seconded the motion.

Council Member Hilson requested that the maker of the motion and the second to consider adding a friendly amendment to bring up conditions on the site in the landscaping to current requirements. Council Members Ward and Henson agreed.

Council Member Dowling suggested a revision of the findings as they related to a denial. He noted that he appreciated the cooperation of the owner with the neighborhood in this area. He expressed concern that the Police Department would be overworked while other business might be neglected. He would not be supporting the motion.

Council Member Rodriguez said that this is ludicrous when the end result is simply to purchase a hamburger. It is too complicated a situation. There are too many things involved for her to support this motion.

Council Member Henson said he felt that approval is warranted since this is a trial period and it could be rescinded subjectively. He noted the positive changes in the area.

Mayor Cooper that she would be supporting the motion as there are very few opportunities for late night activities in this area for young people to congregate in Hayward. She suggested the Police to be there a couple of weekends to cite people who are breaking the law. This would benefit many. She commented on the lack of activities for young people in this area late at night.

It was moved by Council Member Ward, seconded by Council Member Henson, and carried to adopt this resolution by the following roll call vote:

Resolution 03-126, "Resolution Approving Use Permit Application No. 2002-0577 for 24-hour Operation of the Drive-Through Window for a Period of One Year at the Jack-in-the-Box Located at 1075 West Tennyson Road and Approving Additional Conditions of Approval"

AYES: Council Members Jimenez, Ward, Henson  
MAYOR Cooper

NOES: Council Member Hilson, Rodriguez, Dowling

ABSENT: None

ABSTAINED: None